

**(2023) 05 GUJ CK 0051**

**In the Gujarat High Court**

**Case No : R/Criminal Misc.Application No. 8379 Of 2023**

Simaben Imranbhai Paya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

**Date of Decision : 11-05-2023**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 439

Gujarat Land Grabbing (Prohibition) Act, 2020 — Section 3, 4, 5(c)

**Citation : (2023) 05 GUJ CK 0051**

**Hon'ble Judges : M. R. Mengdey, J**

**Bench : Single Bench**

**Advocate : Maulin G Pandya, Mohammad Asfak G Malek, Utkarsh Sharma**

**Final Decision : Allowed**

## Judgement

M. R. Mengdey, J

1. This Application is filed by the Applicants under Section 439 of the Code of Criminal Procedure for enlarging the applicant on Regular Bail in connection with C.R. No.11204046230242 of 2023 registered with Nadiad Town Police Station, District : Kheda, for the offences punishable under Sections 3, 4, 5(c) of the Gujarat Land Grabbing Act.

2. Heard learned Advocate Mr.M.G. Pandya for the applicants and learned APP Mr.Utkarsh Sharma for the Respondent State.

3. Rule. Learned APP waives service of Rule for the Respondent - State of Gujarat.

Submission of the Parties:

4. Learned Advocate for the applicants has submitted that the applicants are innocent as they have not taken part in the offence as alleged. They have family roots in the society and therefore, they are not likely to flee away from justice. That they will abide by whatever conditions imposed by the Hon'ble Court. He has further vehemently submitted that there is no direct involvement of the

Applicants Accused in the present case so far as allegation is concerned. He has further submitted that the after the FIR was lodged, the parties have entered into settlement. He further submitted that the other-side has no objection, if the present application is allowed. He has therefore prayed that discretion may kindly be exercised and grant bail to the Applicants Accused.

4. Per contra, learned APP has vehemently opposed to grant of bail looking to the nature and gravity of offence, involvement of the Applicants / Accused. He further submitted that if the Hon'ble Court is inclined to grant bail then in such case strict conditions may be imposed to secure the presence of the Applicants Accused.

4.1. Learned advocate Mr.Harnish Patel for the complaint is present before this Court and identified original complainant, who is present before this Court. He has submitted that matter is settled between the parties and he has no objection, if the present application is allowed.

Merits of the Case:

5. This court has considered the following aspects:

(a) As per catena of decisions of Hon'ble Supreme Court, there are mainly 3 factors which are required to be considered by this court i.e. prima facie case, availability of Applicant accused at the time of trial and tampering and hampering with the witnesses by the accused.

(b) That the learned Advocate for the Applicants has submitted that the Applicants Accused are not likely to flee away.

(c) It is submitted by the learned advocate for the applicants after the FIR was lodged, the parties have entered into settlement. He further submitted that the other-side has no objection if the present application is allowed.

(d) The parties have also produced affidavit of the First Informant along with the settlement agreement.

(d) That the Applicant Accused is in custody since 19.04.2023.

(e) The law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. C.B.I. Reported in (2012) 1 SCC 40, wherein it is held that bail is a rule and jail is an exception.

6. Having heard the learned Advocates for the parties and perusing the record produced in this case as well as taking into consideration the facts of the case, nature of allegations, gravity of accusation, development of settlement, availability of the Applicants Accused at the time of Trial etc. and the role attributed to the present Applicants accused, the present Application deserves to be allowed and accordingly stands allowed. The Applicants Accused are ordered to be released on regular bail in connection with C.R. No.11204046230242 of 2023 registered with Nadiad Town Police Station, District : Kheda, on executing a

personal bond of Rs.10,000/- each with one surety of the like amount to the satisfaction of the trial Court, subject to the following conditions that they shall:

(a) not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer or tamper with the evidence.

(b) maintain law and order and not to indulge in any criminal activities.

(c) furnish the documentary proof of complete, correct and present address of his residence to the Investigating Officer and to the Trial Court at the time of executing the bond and shall not change his residence without prior permission of the trial Court.

(d) provide their contact numbers as well as the contact numbers of the sureties before the Trial Court. In case of change in such numbers inform in writing immediately to the trial Court.

(e) file an affidavit stating their immovable properties whether self acquired or ancestral with description, location and present value of such properties before the Trial Court, if any.

(f) not leave India without prior permission of the Trial Court

(g) mark presence before the concerned police station on every 1st day of English calendar month between 12:00 Noon and 2:00 PM till one year or till the trial is concluded, whichever is earlier.

(h) surrender passport, if any, to the Trial Court within a week. If he does not possess passport, they shall file an Affidavit to that effect.

7. Bail bond to be executed before the Trial Court having jurisdiction to try the case. It would be open for the Trial Court concerned to give time to furnish the solvency certificate if prayed for.

8. If breach of any of the above conditions is committed, the Trial Court concerned will be free to issue warrant or take appropriate action according to law. The Authorities will release the Applicants forthwith only if they are not required in connection with any other offence for the time being.

9. At the trial, the concerned trial Court shall not be influenced by the prima facie observations made by this Court in the present order.

10. Rule is made absolute. The Registry is directed to communicate this order by Fax / by E-mail to the concerned Court / Authority.